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10/823,480

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Todd Landon

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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/05/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/823,480

Applicant(s)

LANDON ET AL.

Examiner

Carolyn A. Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-148 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-148 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 4-13-04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 77-88, 91-94 and 97-114 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richards (5,308,637).

Richards (5,308,637) discloses the manufacture of a food sauce. The process is described, at columns 3 to 4 and in the examples, to include a separate preparation of the fat and aqueous phase. At column 2, the aqueous phase is prepared with starch and a variety of ingredients and mixed. The fat phase is prepared to include an emulsifier. The ingredients are combined and the sauce is heated to 180-212F to cook the sauce and emulsify the ingredients to form an oil in water emulsion (column 4, lines 48-49). After heating, the product is packaged. The amount of fat expected in the composition is shown at claim 4 to range from 1 to 50%. Protein is an expected component in the Alfredo sauce of example 2 because the formulation includes milk. Heat treatment of the aqueous and fat phase is shown in the examples. The homogenization step of claim 80 is a process limitation, carrying no weight in these product claims. No

unobvious unexpected difference is seen between the stability of the Richards emulsion and the emulsion of the claims. It is appreciated that whey solids and buttermilk solids are not mentioned but these ingredients are known components of whole milk. It is also appreciated that intermediate mixtures are not mentioned but the intermediates are formed as a part of the process and are not seen to be critical to the final product. It is finally appreciated that hollandaise sauce is not mentioned but to formulate hollandaise sauce from the sauce base of Richards would have been an obvious way to modify the sauce product.

Claims 1-5, 7, 10, 11, 15, 22-39, 77-88, 93, 94, 97-114 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andreae (WO 96/25857).

Andreae discloses high temperature cooking sauce. At pages 11-13, au gratin sauce is disclosed. Here cheese is combined with hot water at 70C. This is considered to be the first intermediate. Then vegetable fat and other ingredients, that include egg yolk as an emulsifier, are mixed in at 70C (158F). This is considered to form the second intermediate. Then the combination is sterilized at 140C, cooled to 60-70C and homogenized at 200-400 bar (2900-5800psig). The final product was considered to be

stable. The composition is disclosed at page 2, lines 25-37 to contain the basic ingredients required in claim 77. Claim 1 appears to differ from Andreae in the recitation of the form of the emulsion. Although the form of the emulsion is not mentioned, one of ordinary skill in the art would have expected the emulsion of Andreae to be an oil in water emulsion from the relative amounts of oil and water in the emulsion. It is appreciated that Alfredo and hollandaise sauce are not mentioned but it would have been obvious to modify the formulations in Andreae to achieve the desired sauce of the claims.

Claims 1-5, 7, 14, 20, 21, 30, 35-45, 47, 57, 58, 61, 65, and 67-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kroening (2003/0219523 or 2003/0219524).

Both of these publications are related to the manufacture of hollandaise sauce and are similar. The 2003/0219523 publication is discussed in this rejection in order to point to specific parts of the specification. On page 7, sample A is provided. The aqueous phase is made to contain citric acid. Then egg yolk is added. This is taken to be the first intermediate. The butter is melted at 125F or 52 C with agitation. Then the melted butter is added to the aqueous phase and the combination

is mixed. This is taken to be the second intermediate phase. Finally a two-stage homogenizer was used to homogenize the blend under the pressure conditions indicated in claim 1. The claims appear to differ from Kroening in the recitation of the form of the emulsion but preamble limitations do not alone carry any patentable weight. Although Alf redo and butter sauce are not mentioned, it would have been obvious to adjust the formulation of Kroening to prepare these particular sauces.

Claims 1-5, 7, 12, 13, 20-24, 33-45, 47, 51, 52, 57, 58, 67-75, 77-83, 86-88, 95-99, 109-114 rejected under 35 U.S.C. 103(a) as being unpatentable over Muir (2004/0005996).

Muir discloses protein-stabilized emulsions. At example 1 on page 3, soy protein isolate is combined with water and stirred at 70C. This is considered to be the first intermediate. After lowering the pH of the aqueous mixture, oil and sugar are added with mixing. This is taken to be the second intermediate. Finally the mixture is treated in a micro fluidizer at 10,000psi. In example 3, freeze thaw stable Hollandaise sauce is made by a similar process. Here the "second intermediate" is homogenized or micro fluidized at 5000 psi. The preparations are considered to be oil in water emulsions (page 5, paragraph 0088). Muir draws equivalence

between a micro fluidizer and an homogenizer in paragraph 0088. The fat content of the emulsions is shown in Table 1. The claims appear to differ from Muir in the recitation of the first and second intermediates but no unobvious or unexpected result is seen from the recitation because Muir discloses preparation of the emulsion in stages as if they were intermediates. It is appreciated that pasteurization is not mentioned but pasteurizing food is a well-known way of preserving food items. It is also appreciated that Alf redo sauce is not mentioned but no unobvious or unexpected result is seen from the preparation of one type of sauce over the other.

Claims 1-6, 14-16, 20, 22-37, 41-57, 59-70, 75-90, 97-111, 115-119, 121-124, 133-145, 147 & 148 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin (2002/0054939).

Irwin discloses pH-modified sauces. The formulation for the sauces is shown in the examples. Alfredo sauce and hollandaise sauce are contemplated in paragraphs 0049 and 0054. In example 2, white sauce is prepared from cream, soybean oil, cheese and butter as the fat component. The aqueous component is shown in column 1 of page 2 to contain a number of dissolved solids and an emulsifier. The aqueous ingredients are

combined with mixing and heat. Then the fat and aqueous phases are combined together and homogenized at 500 psi. Claim 1 appears to differ from Irwin in the recitation of the preparation of intermediates but one of ordinary skill in the art would understand the various process steps in Irwin to be intermediates. The heating step at paragraph 0024 would be expected to form a pasteurizing effect. It is appreciated that hot filling the emulsion is not mentioned. No unobvious or unexpected results are seen from this feature, given the fact that the final product is commercially sterile. It is also appreciated that "oil-in-water" emulsion is not mentioned but one of ordinary skill in the art would expect the emulsion to be an oil-in-water emulsion from the ingredients in the sauce. The extent of cheese in the sauce is enhanced in example 3. No unobvious difference is seen between the stability of Irwin and the stability of the claims. Although buttermilk solids are not mentioned, it would have been obvious to include buttermilk solids to flavor the final desired sauce.

Claims 120-121 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.



The two percentages of ingredients are confusing and appear to contradict each other in these claims. Clarification is requested.

Claims 115-124, 127-128, 133-142 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bos (EP 0340857).

Bos discloses an edible oil-in-water emulsion. In example 1, cream is added to water, skim milk powder, butterfat and whey protein concentrate. After mixing, pasteurization and homogenization, the product is cooled to form a spread. The claims appear to differ from Bos in the recitation of an emulsifier. Even though an emulsifier is not mentioned, the emulsifier, in this case, is an inherent component of the composition because the product is stated to be an emulsion. No difference is seen between the stability of the claims and the stability of Bos. The way the product is made, e.g. by forming intermediates, is a process limitation, carrying no weight in the product claims.

Claims 77-88, 93-94, 99, 101-122, 125-128, 133-148 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stuchell (6,759,078).

Stuchell discloses an aseptic cream substitute for use in preparing sauce bases. The sauces made are disclosed at column 7 to include hollandaise, Alfredo and lemon butter sauce. The formulation for the

cream substitute is shown in Example 1 to include water phase that is combined with melted butter, homogenized, pasteurized and cooled.

Although emulsifier is not mentioned in the product, it forms an obvious part of the composition, as demonstrated by the overall quality of the product.

Egg yolks are the emulsifier in the hollandaise formulation. The specific processing conditions do not carry any weight in the product claims.

Although buttermilk solids are not mentioned, their use would have been an obvious way to create a buttermilk flavor in the product.

Claims 1-5 and 77-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Inayoshi (5,494,695).

Inayoshi discloses custard cream as an oil-in-water emulsion. In example 1, warming the oil-in-water phase to 70C and mixing in lecithin make the emulsion. Then the aqueous phase, including sucrose and egg yolk with sodium hexametaphosphate is heated to 60C. The combination is homogenized, pasteurized and cooled to 10C. Claim 1 appears to differ in the recitation of the homogenizer pressure. No unobvious or unexpected results are seen from this feature, especially when a stable oil-in-water emulsion is finally achieved.

Claims 17-19, 54-56 and 131-132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin as applied to claims 1-6, 8, 9, 14-16, 20, 22-37, 41-57, 59-70, 75, 76-90, 97-111, 115-119, 121-124, 133-145, 147 and 148 above, and further in view of either of Norris (4,005,228) or Youcheff (6,265,007).

The claims appear to differ from Irwin in the recitation of the use of anhydrous fat. Each of Youcheff and Norris teach that anhydrous fat is known in the art. It would have been obvious to one of ordinary skill in the art to utilize the fat of Norris or Youcheff as an obvious alternative source of fat in the Irwin process.

Claims 129-130 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin as applied to claims 1-6, 8, 9, 14-16, 20, 22-37, 41-57, 59-70, 75, 76-90, 97-111, 115-119, 121-124, 133-145, 147 and 148 above, and further in view of Muir (2004/0005996).

The claims appear to differ from Irwin in the recitation of the use of soy protein in the product. Muir teaches that soy protein has a known use in emulsion. It would have been obvious to one of ordinary skill in the art to utilize soy-based cheese as a substitute for dairy cheese in Irwin in order to provide a vegetarian alternative in the sauce.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CAROLYN PADEN 2-21-07  
PRIMARY EXAMINER